



BILLING CODE: 3410-34-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS-2010-0113]

RIN 0579-AD40

Importation of Fresh Pitaya Fruit from Central America into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the fruits and vegetables regulations to allow the importation of fresh pitaya fruit from Central America into the continental United States. As a condition of entry, the pitaya fruit must be produced in accordance with a systems approach that includes requirements for monitoring and oversight, establishment of pest-free places of production, and procedures for packing the pitaya fruit. This action will allow for the importation of pitaya fruit from Central America into the continental United States while continuing to provide protection against the introduction of plant pests.

EFFECTIVE DATE: [Insert date 30 days after date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Mr. David Lamb, Import Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1236; (301) 851-2103.

SUPPLEMENTARY INFORMATION:

Background

The regulations in “Subpart–Fruits and Vegetables” (7 CFR 319.56-1 through 319.56-54, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests within the United States.

On May 24, 2011, we published in the Federal Register (76 FR 30036-30040, Docket No. APHIS-2010-0113) a proposal¹ to amend the regulations by allowing fresh pitaya from Central America to be imported into the continental United States. We proposed that, as a condition of entry, the pitaya fruit must be produced in accordance with a systems approach that includes requirements for monitoring and oversight, establishment of pest-free places of production, and procedures for packing the pitaya fruit.

We solicited comments concerning our proposal for 60 days ending July 25, 2011. We did not receive any comments.

Therefore, for the reasons given in the proposed rule, we are adopting the proposed rule as a final rule, without change.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of

¹ To view the proposed rule and supporting documents, go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2010-0113>.

the full analysis are available by contacting the person listed under FOR FURTHER INFORMATION CONTACT or on the Regulations.gov Web site (see footnote 1 for a link to Regulations.gov).

This rule will allow the importation of fresh pitaya fruit into the continental United States from the Central American countries of Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama in accordance with a systems approach that includes requirements for monitoring and oversight, establishment of pest-free places of production, and procedures for packing the pitaya fruit. Entities potentially affected by the rule are U.S. pitaya fruit growers, of which most, if not all, are small entities.

Pitaya fruit is produced in Hawaii, California, and Florida, but the quantities produced, numbers of U.S. producers, quantities imported, and other factors needed to assess likely economic effects of this rule are not known. The quantity of pitaya fruit expected to be imported from Belize, Costa Rica, El Salvador, Guatemala, Honduras, and Panama is also unknown. Nicaragua estimates exporting 1,200 metric tons (60 forty-foot containers) of pitaya fruit to the continental U.S. annually, and it is thought that the other countries may ship similar or lesser amounts.

Executive Order 12988

This final rule allows fresh pitaya to be imported into the United States from Central America. State and local laws and regulations regarding pitaya imported under this rule will be preempted while the fruit is in foreign commerce. Fresh fruits and vegetables are generally imported for immediate distribution and sale to the consuming public, and remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to

this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579-0378.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851-2908.

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are amending 7 CFR part 319 as follows:

PART 319--FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows

Authority: 7 U.S.C. 450, 7701-7772, and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. A new § 319.56-55 is added to read as follows:

§ 319.56-55 Fresh pitaya from certain Central American countries.

Fresh pitaya fruit (Hylocereus spp.) may be imported into the United States from Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama in accordance with the conditions described in this section. These conditions are designed to prevent the introduction of the following quarantine pests: Anastrepha ludens, Ceratitis capitata, Dysmicoccus neobrevipes, and Planococcus minor.

(a) Monitoring and oversight. (1) The national plant protection organization (NPPO) of the exporting country must provide a workplan to APHIS that details the activities that the NPPO will, subject to APHIS approval, carry out to meet the requirements of this section. APHIS will be directly involved with the NPPO in the monitoring and auditing implementation of the systems approach.

(2) The NPPO of the exporting country must conduct inspections at the packinghouses and monitor packinghouse operations. Starting 2 months before harvest and continuing until the end of the shipping season, the NPPO of the exporting country must visit and inspect the places of production monthly to verify compliance with the requirements of this section. If the NPPO finds that a packinghouse or place of production is not complying with the requirements of this section, no fruit from the place of production or packinghouse will be eligible for export to the United States until APHIS and the NPPO have conducted an investigation and appropriate remedial actions have been implemented.

(3) The NPPO must review and maintain all forms and documents related to export program activities in places of production and packinghouses for at least 1 year and, as requested, provide them to APHIS for review.

(b) Place of production requirements. (1) The personnel conducting the trapping required in paragraph (c) of this section must be hired, trained, and supervised by the NPPO of the exporting country. The exporting country's NPPO must certify that each place of production has effective fruit fly trapping programs, and follows control guidelines, when necessary, to reduce quarantine pest populations. APHIS may monitor the places of production.

(2) The places of production producing pitaya for export to the United States must be registered with the NPPO of the exporting country.

(3) Trees and other structures, other than the crop itself, must not shade the crop during the day. No C. capitata or A. ludens host plants may be grown within 100 meters of the edge of the production site.

(4) Pitaya fruit that has fallen on the ground must be removed from the place of production at least once every 7 days and may not be included in field containers of fruit to be packed for export.

(5) Harvested pitaya fruit must be placed in field cartons or containers that are marked to show the place of production.

(c) Mitigation measures for C. capitata and A. ludens. (1) Pest-free places of production. (i) Beginning at least 1 year before harvest begins and continuing through the end of the shipping season, trapping for A. ludens and C. capitata must be conducted in the places of pitaya fruit production with at least 1 trap per hectare of APHIS-approved traps, serviced every 7 days.

(ii) From 2 months prior to harvest through the end of the shipping season, when traps are serviced, if either A. ludens or C. capitata are trapped at a particular place of production at cumulative levels above 0.07 flies per trap per day, pesticide bait treatments must be applied in the affected place of production in order for the place of production to remain eligible to export

pitaya fruit to the continental United States. If the average A. ludens or C. capitata catch is greater than 0.07 flies per trap per day for more than 2 consecutive weeks, the place of production is ineligible for export until the rate of capture drops to an average of less than 0.07 flies per trap per day.

(iii) The NPPO must maintain records of fruit fly detections for each trap, update the records each time the traps are checked, and make the records available to APHIS upon request. The records must be maintained for at least 1 year for APHIS review.

(2) Pest-free area for C. capitata. If the pitaya fruit are produced in a place of production located in an area that is designated as free of C. capitata in accordance with § 319.56-5, the trapping in paragraph (c)(1) of this section is not required for C. capitata.

(d) Packinghouse requirements. (1) The packinghouses must be registered with the NPPO of the exporting country.

(2) All openings to the outside must be covered by screening with openings of not more than 1.6 mm or by some other barrier that prevents pests from entering the packinghouses.

(3) The packinghouses must have double doors at the entrance to the facilities and at the interior entrance to the area where the pitaya fruit are packed.

(4) While in use for packing pitaya fruit for export to the United States, the packinghouses may only accept pitaya fruit that are from registered places of production and that are produced in accordance with the requirements of this section.

(e) Post-harvest procedures. The pitaya fruit must be packed within 24 hours of harvest in a pest-exclusionary packinghouse. Pitaya fruit must be packed in insect-proof cartons or containers that can be sealed at the packinghouse, or covered with insect-proof mesh or a plastic

tarpaulin for transport to the United States. These safeguards must be intact upon arrival in the United States.

(f) Phytosanitary inspection. (1) The NPPO of the exporting country must visually inspect a biometric sample of pitaya fruit, jointly approved by APHIS and the NPPO of the exporting country, for D. neobrevipes and P. minor, and cut open a portion of the fruit to detect A. ludens and C. capitata. If the fruit is from a pest-free area for C. capitata, then the fruit will only be inspected for A. ludens.

(2) The fruit are subject to inspection at the port of entry for all quarantine pests of concern. Shipping documents identifying the place(s) of production in which the fruit was produced and the packing shed(s) in which the fruit was processed must accompany each lot of fruit presented for inspection at the port of entry to the United States. This identification must be maintained until the fruit is released for entry into the United States.

(3) If D. neobrevipes or P. minor is found, the entire consignment of fruit will be prohibited from import into the United States unless the shipment is treated with an approved treatment monitored by APHIS. If inspectors (either from the exporting country's NPPO or at the U.S. port of entry) find a single fruit fly larva in a shipment, they will reject the entire consignment for shipment to the United States, and the place of production for that shipment will be suspended from the export program until appropriate measures, agreed upon by the NPPO of the exporting country and APHIS, have been taken.

(g) Commercial consignments. The pitaya fruit may be imported in commercial consignments only.

(h) Phytosanitary certificate. Each consignment of pitaya fruit must be accompanied by a phytosanitary certificate issued by the NPPO of the exporting country, containing an additional declaration stating that the fruit in the consignment was produced in accordance with requirements in 7 CFR 319.56-55.

(Approved by the Office of Management and Budget under control number 0579-0378)

Done in Washington, DC, this 9th day of April 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012-9066 Filed 04/13/2012 at 8:45 am; Publication Date: 04/16/2012]